Mijan bin Mohd Deros v Public Prosecutor

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COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO D-05–76 OF 2003
MOHD GHAZALI, LOW HOP BING AND VINCENT NG JJCA
2 SEPTEMBER 2008

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Criminal Law — Dangerous drugs — Trafficking — Appeal against conviction and sentence — Whether there was break in chain of evidence in relation to handling of exhibits — Whether failure to mark exhibits in presence of accused detrimental to prosecution's case — Whether trial judge failed to consider accused's claim that he was an addict and cannabis was for his own consumption

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On 18 October 2001, two police officers who were on duty at a police post situated at a jetty along the Golok River, Kelantan ('the jetty') stopped the accused for a random search. Whilst one of the officers was searching his person, the accused attempted to run away and was arrested. The accused then took out several transparent plastic packets containing plant material from the inside of his trousers. The police officers thereafter brought the accused to 'Tek A', another police post. When the accused was strip searched at Tek A, 84 transparent plastic packets containing plant material were found on his person. The chemist, who received the said plastic packets from the investigating officer on 22 October 2001, analysed and confirmed the plant material found in the 84 transparent plastic packets to be 527.5g of cannabis as defined under s 2 of the Dangerous Drugs Act 1952 ('the Act'). The accused was therefore charged with the offence of trafficking in 527.5g of cannabis under s 39B(1)(a) of the Act. At the close of the prosecution's case, the trial judge found that a prima facie case had been made out against the accused on the offence charge. The accused in his defence denied that he had purchased the cannabis for resale. Instead he testified that he had bought the plastic packets of cannabis in the town of Golok for RM200 and claimed that they were for his own consumption. At the conclusion of the trial the trial judge found that the prosecution had proved that the accused was in possession of the cannabis and that since the weight of the cannabis was more than 200g the accused was presumed to be trafficking in the cannabis. The accused was therefore found guilty of the offence charged and accordingly sentenced to death. This was the appeal by the accused against that conviction and sentence. In his grounds of appeal the accused raised the issue that that there was a break in the chain of evidence in relation to the handling of the cannabis and that therefore there was a doubt as to whether the drugs that were sent to the chemist for analysis were the same as those found on the

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person of the accused; that since the exhibits were not marked in the presence of the accused he was not given an opportunity to confirm whether the drugs seized were the ones that were produced in court; and that the trial judge had failed to consider the accused's claim that he was an addict and that the cannabis was for his own consumption, which fact was not challenged by the prosecution. To support his contention that there was a break in the chain of evidence in relation to the handling of the cannabis, the accused relied on the fact that although the charge stated that the offence was committed on 18 October 2001, the typewritten notes of evidence stated that the chemist received the drugs for analysis from the investigating officer on 22 January 2001 ie prior to the date of the commission of the offence.

Held, dismissing the appeal and affirming the conviction and sentence:

(1) A perusal of the handwritten notes of the trial judge compared with the typewritten notes of evidence clearly showed that the errors pointed out by the accused with regard to the dates that was '22.1.2001' instead of '22.10.2001' were typing errors. Thus there are no merits in the issue raised by the accused that there was a break in the chain of evidence in relation to the handling of the cannabis based on this fact (see paras 17–18 & 21).

(2) There is no requirement under the law that exhibits must be marked in the presence of the accused person. In any case it was noted that the defence never put any questions to challenge that the 84 transparent plastic packets produced at the trial were not the same packets recovered from the accused when he was arrested (see paras 19 & 22).

(3) In his grounds of judgment the trial judge had considered the accused's defence that the drugs found on him were for his own consumption. Thus there were no merits in the accused's contention that the trial judge had failed to consider his defence of personal consumption (see para 26).

(4) The evidence adduced by the prosecution had established that the appellant was in possession of the 84 transparent plastic packets and this fact denotes that the cannabis was in the accused's custody and control. Since the weight of the cannabis found on the person of the accused was in excess of 200g as provided in s 37(da)(vi) of the Act the trial judge found that this would trigger the statutory presumption of trafficking. Thereafter the trial judge rejected the accused's defence that he was a drug addict and that the cannabis was for his own consumption and therefore convicted the accused on the charge of

trafficking. From this it was clear that the trial judge had erred in finding the accused guilty of the offence as per charged (see paras 24 & 26).

[Bahasa Malaysia summary

Pada 18 Oktober 2001, dua orang pegawai polis yang bertugas di pondok polis yang bertempat di jeti sepanjang Sungai Golok, Kelantan ('jeti') telah memberhentikan tertuduh bagi pemeriksaan rambang. Semasa salah seorang pegawai memeriksa badan tertuduh, tertuduh cuba untuk melarikan diri dan telah ditangkap. Tertuduh kemudiannya telah mengeluarkan beberapa paket plastik lut sinar yang mengandungi bahan tumbuhan daripada dalam seluarnya. Pengawai polis tersebut kemudiannya membawa tertuduh ke 'Tek A', pondok polis yang lain. Apabila tertuduh diperiksa tanpa pakaian di Tek A, 84 paket plastik lut sinar mengandungi bahan tumbuhan dijumpai di badannya. Ahli kimia yang menerima paket plastik tersebut daripada pegawai penyiasat pada 22 Oktober 2001 telah menganalisa dan mengesahkan bahawa bahan tumbuhan yang dijumpai di dalam 84 paket plastik lut sinar sebagai kanabis seberat 527.5g seperti mana yang didefinisikan di bawah s 2 Akta Dadah Berbahaya 1952 ('Akta'). Oleh itu, tertuduh didakwa dengan kesalahan mengedar 527.5g kanabis di bawah s 39B(1)(a) Akta tersebut. Di akhir kes pendakwaan, hakim bicara mendapati bahawa kes prima facie telah dibuktikan terhadap tertuduh atas kesalahan yang dipertuduhkan. Tertuduh di dalam pembelaannya telah menafikan bahawa tertuduh telah membeli kanabis untuk dijual semula. Sebaliknya tertuduh memberikan keterangan bahawa tertuduh telah membeli paket plastik kanabis di pekan Golok sejumlah RM200 dan menyatakan bahawa ianya untuk kegunaannya sendiri. Di akhir perbicaraan, hakim bicara mendapati bahawa pendakwaan telah membuktikan bahawa tertuduh memiliki kanabis dan memandangkan berat kanabis adalah lebih daripada 200g tertuduh dianggap mengedar kanabis. Oleh itu tertuduh didapati bersalah atas kesalahan yang dipertuduhkan dan sewajarnya dihukum mati. Ini adalah rayuan tertuduh terhadap sabitan dan hukuman. Di dalam alasan rayuan, tertuduh membangkitkan isu bahawa terdapat putusnya rantaian bukti berkenaan dengan pengendalian kanabis dan oleh itu terdapat keraguan berkenaan dengan sama ada dadah yang dihantar kepada ahli kimia untuk dianalisa adalah sama seperti yang ditemui di badan tertuduh; memandangkan ekshibit tidak ditanda semasa kehadiran tertuduh, tertuduh tidak diberikan peluang untuk mengesahkan sama ada dadah yang dirampas adalah dadah yang sama yang dikemukakan di mahkamah; dan hakim bicara telah gagal untuk mempertimbangkan pernyataan tertuduh yang mana tertuduh adalah penagih dadah dan kanabis tersebut adalah untuk kegunaannya sendiri, yang mana fakta tersebut tidak dicabar oleh pihak pendakwaan. Untuk menyokong pernyataannya terdapat putusnya rantaian

A bukti berkenaan dengan pengendalian kanabis, tertuduh bergantung kepada fakta bahawa walaupun pertuduhan menyatakan bahawa kesalahan telah dilakukan pada 18 Oktober 2001, nota keterangan yang ditaip menyatakan bahawa ahli kimia telah menerima dadah untuk dianalisa daripada pegawai penyiasat pada 22 Januari 2001 iaitu sebelum tarikh berlakunya kesalahan
B tersebut.

Diputuskan, menolak rayuan dan mengesahkan sabitan dan hukuman:

C (1) Penelitian terhadap nota tulisan tangan hakim bicara dibandingkan dengan nota keterangan yang ditaip jelas menunjukkan bahawa terdapat kesilapan yang ditunjukkan oleh tertuduh berkenaan dengan tarikh bahawa '22.1.2001' dan bukan '22.10.2001' adalah kesilapan menaip. Oleh itu, tiada merit dalam isu yang dibangkitkan oleh
D tertuduh bahawa terdapat putusnya rantaian bukti berkenaan dengan pengendalian kanabis berdasarkan fakta (lihat perenggan 17–18 & 21).

(2) Tidak terdapat keperluan di bawah undang-undang bahawa ekshibit mestilah ditandakan dengan kehadiran tertuduh secara kediri. Dalam
E mana-mana kes adalah diambil perhatian bahawa pembelaan langsung tidak bertanyakan apa-apa soalan untuk mencabar bahawa 84 paket plastik lut sinar yang dikemukakan semasa perbicaraan adalah paket lain yang dijumpai daripada tertuduh apabila tertuduh ditangkap (lihat perenggan 19 & 22).

F (3) Dalam alasan penghakiman, hakim bicara telah mempertimbangkan pembelaan tertuduh bahawa dadah yang dijumpai atasnya adalah untuk kegunaannya sendiri. Oleh itu, tidak terdapat merit di dalam pernyataan tertuduh bahawa hakim bicara telah gagal untuk
G mempertimbangkan pembelaan tertuduh untuk kegunaan sendiri (lihat perenggan 26).

(4) Keterangan yang dikemukakan oleh pihak pendakwaan telah membuktikan bahawa perayu memiliki 84 paket plastik lut sinar dan fakta ini menunjukkan bahawa kanabis di dalam jagaan dan kawalan
H tertuduh. Sementara itu, berat kanabis yang dijumpai pada diri tertuduh adalah melebihi 200g seperti yang diperuntukkan di dalam s 37(da)(iv) Akta, hakim bicara mendapati bahawa ini mencetuskan anggapan statutori pengedaran. Seterusnya, hakim bicara telah menolak pembelaan tertuduh bahawa tertuduh adalah penagih dadah dan
I kanabis tersebut adalah untuk kegunaannya sendiri dan oleh itu mensabitkan tertuduh atas pertuduhan mengedar. Ini adalah jelas bahawa hakim bicara tidak melakukan kesilapan dalam memutuskan tertuduh bersalah atas kesalahan seperti yang dipertuduhkan (lihat perenggan 24 & 26).]

Notes

For cases on trafficking see 4 *Mallal's Digest* (4th Ed, 205 Reissue) paras 126–137.

Cases referred to

Looi Kow Chai & Anor v PP [2003] 2 MLJ 65, CA (refd)
PP v Abdul Manaf bin Muhamad Hassan [2006] 3 MLJ 193, FC (refd)
Shamsuddin bin Hassan & Anor v PP [1991] 3 MLJ 314, SC (refd)

Legislation referred to

Criminal Procedure Code s 180, 180(1)
Dangerous Drugs Act 1952 ss 2, 37(da)(vi), 37(da)(vii), 39B, 39B(1)(a)

Appeal from: Criminal Trial No 45–4 of 2002 (High Court, Kota Bharu)

Abd Latiff Ahmad (Abd Latiff Ahmad & Co) for the appellant.
Awg Armadajaya Awg Mahmud (Deputy Public Prosecutor, Attorney General's Chambers) for the respondent.

Mohd Ghazali JCA (delivering judgment of the court):

[1] The appellant was charged with an offence of trafficking in dangerous drugs, namely, 527.5g of cannabis under s 39B(1)(a) of the Dangerous Drugs Act 1952 ('the Act') in the High Court, Kota Bharu. He was convicted and sentenced to death. He appealed to this court. We had on 11 March 2008 dismissed the appeal and our grounds for doing so follows.

[2] The prosecution's case is as follows. At about 5.10pm on 18 October 2001, Lance Corporal Abdul Halim ('SP4') and Lance Corporal Ahmad Khairudin ('SP5'), who were on duty at a police post situated at a jetty named Pengkalan Haram Ibrahim Pencen, Rantau Panjang, Kelantan alongside the Golok River ('the said jetty'), spotted the appellant boarding a boat on the opposite side of the river, ie, on the Thailand side of the river. The appellant then crossed the river and alighted at the said jetty. SP4 and SP5 stopped the appellant, identified themselves and requested for his identity card. Whilst SP4 was searching his person, the appellant attempted to run away and was arrested. The appellant then took out several transparent plastic packets containing plant material from the inside of his trousers. SP4 asked the appellant to place the transparent plastic packets back in the inside of his trousers and together with SP5 brought the appellant to another police post identified as 'Tek A'.

[3] At Tek A, SP4 requested the appellant to take off his shirt and trousers. 84 transparent plastic packets containing plant material were found on the person of the appellant. Subsequently SP4 and SP5 brought the appellant together with the 84 transparent plastic packets containing plant material to the Pasir Mas police station and handed the same to Inspector Goldy Jangan ('SP6'). The appellant was later charged for the offence of trafficking in dangerous drugs under s 39B(1)(a) of the Act.

[4] In the course of the trial, SP3, the chemist who conducted an analysis of the plant material found in the 84 transparent plastic packets confirmed that the same was cannabis as defined under s 2 of the Act having a total net weight of 527.5g.

[5] At the close of the case for the prosecution, the learned trial judge found that a prima facie case had been made out against the appellant on the offence charged and consequently called upon him to enter on his defence.

[6] The appellant elected to give evidence on oath. He testified that he was originally from Kg Sri Tanjung, Pancur, Muar, Johor and worked as a fisherman. He travelled by bus from Muar at 8.30pm on 17 October 2001 and reached Rantau Panjang at 6am on 18 October 2001, ie, the day of the incident. At about 7.30am on the day of the incident, he and a few of his friends made a trip to the town of Golok in Thailand by crossing the Golok River by boat from the said jetty. Later in the day he returned to the said jetty by crossing the Golok River by boat from Thailand. Upon embarking at the said jetty he went to a stall alongside the river and stopped for a drink. He was there for about half an hour. He then went to a friend's house and whilst chatting with the owner of the house, two persons who identified themselves as 'Narkotik' searched his person and found a plastic packet of cannabis in the front pocket of his trousers. He was then brought in a police land-rover to a police post where he was asked to undress. The police found more plastic packets containing cannabis on his person. They then put all the plastic packets in a bag and brought him and the bag to the Pasir Mas police station.

[7] The appellant further testified that he bought the said plastic packets containing cannabis in the town of Golok for RM200 and claimed that it was for his own consumption. He himself had placed the plastic packets containing the cannabis in the inside of his trousers. He said that he was addicted to cannabis since 1964 and that with RM200 worth of cannabis, it would last him for two months.

[8] The appellant claimed that his intention to go to Rantau Panjang was to get workers to work in Singapore. His friends declined the offer and informed him they were already gainfully employed. He denied that he purchased the cannabis for resale.

[9] At the conclusion of the trial, the learned trial judge ruled that after considering all the evidence adduced before him he found that the prosecution has proved its case beyond reasonable doubt. He found the appellant guilty of the offence charged and sentenced him to death.

[10] In his grounds of judgment, the learned trial judge said that at the close of the case for the prosecution, in accordance with s 180(1) of the Criminal Procedure Code ('CPC'), the court has to consider whether the prosecution has made out a prima facie against the appellant. He then referred to *Looi Kow Chai & Anor v Public Prosecutor* [2003] 2 MLJ 65. In that case, in relation to s 180 of the CPC, Gopal Sri Ram in delivering the judgment of the court said (at p 81):

> It therefore follows that there is only one exercise that a judge sitting alone under s 180 of the CPC has to undertake at the close of the prosecution case. He must subject the prosecution evidence to maximum evaluation and to ask himself the question: if I decide to call upon the accused to enter his defence and he elects to remain silent, am I prepared to convict him on the totality of the evidence contained in the prosecution case? If the answer is in the negative then no prima facie case has been made out and the accused would be entitled to an acquittal.

[11] With the above principle in the forefront of his mind the learned trial judge went on to consider whether in the instant appeal the prosecution has at the close of its case made out a prima facie case against the appellant. He was of the view that for a charge under s 39B of the Act, the prosecution has to prove the following:

(a) that the appellant was in possession of the said drugs;

(b) that cannabis is a dangerous drug as defined under the Act and that the weight is as stated in the charge; and

(c) that the appellant was trafficking the said drugs.

[12] In relation to possession, the learned trial judge said he was satisfied that the prosecution has proved that the said 84 transparent plastic packets containing the said drugs were in the appellant's physical possession when he was arrested by the police on the day of the incident and that he had knowledge that the said drugs was cannabis. The evidence showed that the appellant was wearing a pair of jeans when he was arrested and brought to 'Tek A' where was asked to undress by SP4. When he took off his jeans, he

was found to be wearing three pairs of tight shorts and the transparent plastic packets containing the said drugs were found to have been kept in between the tight shorts. The cannabis were packed in the said 84 transparent plastic packets which would denote that any person handling it can see its contents.

[13] In relation to trafficking, the learned trial judge found that the presumption as provided for under s 37(da)(vii) of the Act, namely, that any person found in possession of 200g or more in weight of cannabis otherwise than in accordance with the authority of the Act or any other written law, shall be presumed, until the contrary is proved, to be trafficking in the said drug, operates against the appellant as the evidence clearly showed that the cannabis weighed 527.5g.

[14] Premised upon the above, the learned trial judge ruled that the prosecution has made out a prima facie case against the appellant on the charge of trafficking and hence called upon the appellant to enter on his defence.

[15] At the close of the case for the defence, the learned trial judge found that the appellant failed on a balance of probabilities to rebut the presumption of trafficking as provided for under s 37(da)(vii) of the Act or to raise a reasonable doubt on the prosecution's case and as such ruled that the prosecution has proved its case beyond reasonable doubt. He thus found the appellant guilty and convicted him as per charge. He was accordingly sentenced to death.

[16] Before us, counsel for the appellant raised four issues.

[17] The first issue raised was that there was a break in the chain of evidence in relation to the handling of the said drugs and hence there is a doubt as to whether the said drugs that were found on the person of the appellant were the same drugs that were sent for analysis by the chemist (SP3) and subsequently produced in court as evidence. Counsel then referred to the following discrepancies in the evidence adduced by the prosecution, namely:

(a) the charge states that the offence was committed on 18 October 2001 whereas in the typewritten notes of evidence at page 22 of the the appeal record, the chemist (SP3) stated that he received the said drugs for analysis from the investigation officer of the case (SP6) on 22 January 2001; in relation to this, counsel referred to a copy of the handwritten notes of evidence of the learned trial judge in the supplementary appeal record and pointed out that the learned trial judge had recorded in his notes with regards to the evidence of SP3 that the date of receipt was '22 October 2001' but had later deleted the

figure '0' from the figure '10'; as such, counsel argued that the date the said drugs were handed to the chemist (SP3) was '22 January 2001' and that this is also reflected in the typewritten notes of evidence referred to earlier; counsel then pointed out that in his evidence SP6 said he handed the said drugs for analysis to SP3 on 22 October 2001;

(b) that in the typewritten notes of evidence at p 70 of the appeal record, it is recorded that SP6 said he packed the said drugs on '21 January 2001' whereas he stated earlier on the same page that he sent the said drugs to the chemistry department for analysis on '22 October 2001';

(c) that in the typewritten notes of evidence at p 22 of the appeal record, it is recorded that the chemist (SP3) stated that upon receipt of the exhibits from SP6, he issued an acknowledgment receipt bearing 'No (KT) FOR 1861/01-0' whereas the copy of the receipt which appears at page 195 of the appeal record showed that the receipt number is '(KT) FOR 1961/01–0'; counsel argued that this discrepancy would denote that the said drugs sent for analysis may have been for a different case;

(d) that in the typewritten notes of evidence at p 68 of the appeal record, it is reflected that SP6 said that on '21 October 2000' he took out the said drugs from his steel cabinet and marked them; in relation to this, counsel referred to the handwritten notes of the learned trial judge and pointed out that the writing therein is not clear and one could not say whether it is written as '21 October 2000' or '21 October 2001'; counsel then argued that since the date concerned is doubtful, benefit of the doubt should be given to the appellant and it should be read as '21 October 2000', ie, a date prior to the commission of the offence, which is 18 October 2001.

[18] Premised upon the above arguments, counsel submitted that the dangerous drugs that were sent for analysis came into possession of the investigation officer of the case (SP6) prior to the date of the commission of the offence, viz, 18 October 2001 and hence there was a break in the chain of evidence and thus no prima facie case had been established against the appellant at the close of the case for the prosecution and as such, the appellant ought to have been acquitted and discharged without his defence being called. To support this contention he referred to, amongst others, the case of *Shamsuddin bin Hassan & Anor v Public Prosecutor* [1991] 3 MLJ 314 where it was held that since there were serious gaps in the chain of evidence with regard to the drugs thrown out of the car and the exhibits produced in court, the appellants should not have been called upon to enter on their defence.

[19] The second issue raised by counsel for the appellant was that the exhibits were not marked in the presence of the appellant and the appellant was not given the opportunity to confirm whether the drugs seized were the same drugs that were produced in court as there was no search list. He argued that a search list should have been prepared and signed by the appellant. On this issue, he argued that in his defence, the appellant said that he did not know the total number of plastic packets containing the said drugs that were found on him but this fact was never considered by the learned trial judge.

[20] The third and fourth issues canvassed by counsel for the appellant was that the learned trial judge never considered the appellant's claim that he was a drug addict since 1964 and that this claim was not even challenged by the prosecution. Further the appellant has stated that the said drugs found on him was for his own consumption and that a packet of the said drugs would have cost him RM50 if purchased in Muar whilst his weekly income as a fisherman was only RM200.

[21] With regards to the first issue, a perusal of a copy of the handwritten notes of evidence of the learned trial judge which forms part of the appeal record showed that in recording the evidence of the chemist (SP3) and the investigation officer of the case (SP6), the learned trial judge clearly wrote the date throughout his notes as '22 October 2001', ie, the date when SP6 took out the said drug exhibits from his locked steel cabinet and handed it to SP3 who in his evidence confirmed that he received the said drug exhibits from SP6 on 21 October 2001. This would clearly denote that the date '22 January 2001' wherever it appears in the typewritten notes of evidence (as pointed out by counsel for the defence) were typing errors. The same position would apply with regards to the receipt issued by SP3 when he received the said drug exhibits. The receipt which was exhibited in p 195 of the appeal record, and which is a very poor photocopy of the original, seems to show the receipt number either as being 'No (KT) FOR 1861/01–0' or 'No (KT) FOR 1961/01–0'. The handwritten notes of the learned trial judge clearly showed that he wrote the receipt number as being 'No (KT) FOR 1861/01–0'. Be that as it may, the exhibit at p 195 of the appeal record clearly showed that the date of receipt was '22 October 2001'. After perusing the handwritten notes of the learned trial judge and comparing it with the typewritten notes of evidence, we find that the errors pointed out by counsel for the defence are clearly typing errors. We are indeed surprised that counsel had the temerity to raise this as a basis for his contention that as a result of these errors, there was a break in the chain of evidence in relation to the handling of the said

drugs and hence there is a doubt as to whether the said drugs that were found on the person of the appellant were the same drugs that were sent to SP3 for analysis and subsequently produced in court as evidence. We find no merits in this first issue raised by counsel for the appellant.

[22] We also find no merits with regards to second issue. The evidence showed that SP6 received the 84 transparent plastic packets containing the said drugs from SP4 on 18 October 2001. SP4 affixed his signature on each of the 84 packets in the presence of SP6 and consequently SP6 prepared a handing over list of the exhibits that he received from SP4. They both affixed their respective signature to that list (p 198 of the appeal record). We noted that no questions were put by counsel for the appellant to either SP4 or SP6 as to whether the appellant was present during the handing over and marking of the exhibits. Be that as it may, we cannot find any requirement under the law that such exhibits must be marked in the presence of the accused person. Further, we also noted that counsel for the defence never put any questions to challenge that the 84 transparent plastic packets which contained the said drugs and produced at the trial were not the same packets recovered from the appellant when he was arrested. Seeing that there was a blatant lack of cross-examination of SP4 and SP6 relating to this, we find that this issue raised cannot stand at all.

[23] We also find no merits in the third and fourth issues raised by counsel for the appellant, ie, that the learned trial judge never considered the appellant's claim that he was a drug addict since 1964 and that the said drugs found on him was for his own consumption and that a packet of the said drugs would have cost him RM50 if purchased in Muar whilst his weekly income as a fisherman was only RM200. We find it is incorrect to aver as such. The learned trial judge did deal with this defence. In his grounds of judgment he said (pp 182 to 184 of the appeal record) as follows:

> Saya juga berpendapat bahawa tertuduh telah gagal, atas imbangan kebarangkalian, untuk menyangkal anggapan di bawah s 37(da)(vi) atas alasan-alasan yang berikut. Pertamanya mengikut keterangan tertuduh dia adalah seorang penagih dadah dan ahli keluarganya mengetahui dia seorang penagih dadah. Bagaimanapun tiada percubaan dibuat oleh pihak pembela untuk memanggil ahli keluarga tersebut untuk memberi keterangan mengenai ketagihan tertuduh memandangkan seriusnya pertuduhan yang dikenakan kepadanya. Selain daripada mengatakan bahawa dia seorang penagih dadah, ternyata tiada apa-apa bukti lain yang dikemukakan oleh tertuduh mengenai ketagihannya.
>
> Keduanya tertuduh mengatakan bahawa satu bungkus dadah dalam plastik tersebut berharga RM50 di Muar sedangkan dia hanya berpendapatan sebanyak

RM200 seminggu sebagai nelayan. Dengan pendapatan sedemikian adalah tidak mungkin bagi tertuduh membelanjakan RM50 sehari bagi harga satu paket ganja yang dikatakannya diambil setiap hari. Mengikut tertuduh dia hanya pernah Thailand pada tahun tujuh puluhan. Ini bermakna jika pun benar dia seorang penagih dadah, adakah dia mampu membayar RM50 sehari di Muar bagi dadah-dadah yang diperolehinya sebelum ini jika benar dia memerlukan satu paket sehari sebagaimana yang dinyatakannya. Sudah tentu tidak kerana adalah diluar kemampuannya untuk berbuat demikian. OIeh yang demikian saya tidak dapat menerima penjelasan tertuduh bahawa dadah yang dibelinya itu adalah untuk bekalan dua bulan. Ternyata pada saya ia adalah untuk tujuan pengedaran.

Seperkara lagi, jelas bahawa dadah tersebut dibekalkan atau dibeli dalam paket-paket kecil. Jika benar tertuduh bermaksud untuk membeli dadah jenis cannabis tersebut untuk kegunaan sendiri adalah lebih mudah baginya untuk membawa barang tersebut secara pukal setelah mengambil kira bahawa dia membawa dadah itu masuk mengikut jalan haram.

Berdasarkan kepada alasan-alasan di atas saya mendapati tertuduh telah gagal, di atas imbangan kebarangkalian, menyangkal anggapan di bawah s 37(da)(vi) Akta Dadah Berbahaya 1952 mengenai pengedaran, dan tertuduh juga seterusnya gagal menimbulkan sebarang keraguan yang munasabah ke atas kes pendakwaan. Justeru itu saya memutuskan bahawa pihak pendakwa telah berjaya membuktikan kesnya melampaui keraguan yang munasabah. Dengan itu saya sabitkan tertuduh di atas pertuduhan yang dikemukakan dan menjatuhkan ke atasnya satu-satunya hukuman yang dibenarkan oleh undang-undang, iaitu, hukuman mati.

[24] On the evidence adduced by the prosecution, we find that the appellant was clearly in possession of the 84 transparent plastic packets containing the said dangerous drugs and found on his person when he was arrested by SP4. This fact denotes that the said dangerous drugs were in his custody and control. He clearly had knowledge of the dangerous drugs as he was the one who purchased it in the town of Sungei Golok, Thailand as admitted by him. As such, we are of the view that the learned trial judge was correct in finding that the prosecution has proved that the appellant was in possession of the said dangerous drugs and that it was in his custody. What is also clear is that the said dangerous drugs, ie, 527.5g of cannabis is in excess of 200g as provided under s 37(da)(vi) of the Act. This would trigger the statutory presumption of trafficking as provided in s 37(da) of the Act. Premised upon these facts, we find that the learned trial judge was correct in finding that a prima facie case has been made out against the appellant at the conclusion of the case for the prosecution on the offence charged and calling upon him to enter on his defence.

[25] In his defence, the appellant stated that he was a drug addict and that the said dangerous drugs found on his person were for his own consumption.

The learned trial judge noted that there is nothing to support his claim as such and did not accept such a defence and quite rightly so. The said dangerous drugs were packed in 84 transparent plastic packets and thus it can be reasonably inferred that he was in fact carrying it for the purpose of trafficking. A case on point would be *Public Prosecutor v Abdul Manaf bin Muhamad Hassan* [2006] 3 MLJ 193. In that case the police had stopped a taxi. A search was conducted on the respondent who was a passenger in a taxi. On searching the respondent, a newspaper package was found tucked in his waist containing small plastic packets containing dangerous drugs, namely heroin. From the right side pocket of his track top, another newspaper package was found containing 50 small packets also containing heroin and from the left side pocket three small newspaper packages were found containing 30 small plastic packets also containing heroin; from his trousers pocket a total of 40 small plastic packets were found containing heroin. Upon examination, the chemist confirmed that the small plastic packets contained heroin having a net weight of 62.9g. The respondent was accordingly charged with trafficking in 62.09g of heroin. In delivering the judgment of the court, Arifin Zakaria FCJ said (at p 206):

> In the present case, the drug was carried in small plastic packets each containing small quantity of the drug. According to the evidence, 39.77g of heroin was found in a number of small plastic packets tucked in his waist, while 50 small plastic packets containing 9.09g of heroin was found in the right side pocket and another 30 small plastic packets containing 5.57g of heroin was found in the left side pocket of the track top he was wearing. 20 small plastic packets were found in each of the right and left pockets of his trousers, containing a total of 7.66g of heroin. Judging from the manner the drug was being carried, ie in small plastic packets and taking into account the total amount of the drug involved, the reasonable inference that may be drawn is that the respondent was in fact carrying it for the purpose of trafficking.

[26] The learned trial judge rejected the appellant's defence that he was a drug addict and that the drug was for his own consumption and consequently found that the appellant failed to cast a reasonable doubt. After considering all the evidence adduced the learned trial judge decided that the prosecution has proved its case beyond reasonable doubt and hence found him guilty and convicted him on the charge of trafficking of the said dangerous drugs.

[27] We cannot find where the leaned trial judge went wrong in finding the appellant guilty of the offence as per charge. For the reasons aforesaid, we

dismissed the appeal. The conviction and sentence imposed by the High Court are affirmed.

Appeal dismissed. Conviction and sentence affirmed.

Reported by K Nesan